

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

WERNER ENTERPRISES, INC.,

Plaintiff,

v.

DAVID WIRE, PHILLIP MITCHELL
and AJC LOGISTICS, LLC,

Defendants.

Civil Action No.

1:21-cv-02667-VMC

ORDER

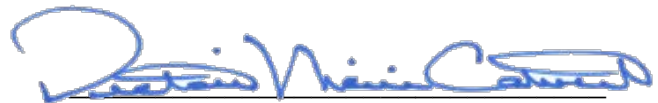
This matter is before the Court on Defendants Motion to Dismiss (Doc. 63). The Parties are **DIRECTED** to file simultaneous supplemental briefs, no longer than eight (8) pages each, on the issue below by no later than June 5, 2023:

In their Motion to Dismiss (Doc. 63-1), Defendants argue that the Proprietary Matters Agreements (Doc. 14-1) signed by Wire and Mitchell are unenforceable under Nebraska law. However, it appears to the Court that Nebraska does not have a statute regarding the enforceability of restrictive covenants in employment agreements. While Georgia follows the *lex loci contractus* doctrine of contract interpretation. Georgia's *lex loci contractus* rule is subject to an important exception: "the application of another jurisdiction's laws is limited to statutes and decisions construing those statutes. When no statute is involved, Georgia courts apply the common law as developed in Georgia rather than foreign

case law.” *Frank Briscoe Co., Inc. v. Georgia Sprinkler Co., Inc.*, 713 F.2d 1500, 1503 (11th Cir. 1983) (applying Georgia law); *Coon v. Medical Center, Inc.*, 797 S.E.2d 828, 834 (Ga. 2017) (“In the absence of a statute, . . . a Georgia court will apply the common law as expounded by the courts of Georgia.”); *Calhoun v. Cullum’s Lumber Mill, Inc.*, 545 S.E.2d 41, 45 (Ga. Ct. App. 2001) (applying Georgia common law to a contract, which was to be performed in South Carolina, after first holding that there was not a South Carolina statute on point to govern the court’s analysis). The issue presented is:

Does Nebraska have a statute governing restrictive covenants in employment contracts? If not, does Georgia common law apply? If Georgia common law applies, are the Proprietary Matters Agreements enforceable under Georgia common law? And if the confidentiality provision is not enforceable under whichever law is applicable, is the entire agreement unenforceable or just that provision?

SO ORDERED this 22nd day of May, 2023.



Victoria Marie Calvert
United States District Judge